

Adopted	Rejected
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COMMITTEE REPORT

YES:	10
NO:	0

MR. SPEAKER:

*Your Committee on Judiciary, to which was referred Senate Bill 45, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 4, between lines 19 and 20, begin a new paragraph and insert:
- 2 "SECTION 4. IC 35-34-1-5 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) An
- 4 indictment or information which charges the commission of an offense
- 5 may not be dismissed but may be amended on motion by the
- 6 prosecuting attorney at any time because of any immaterial defect,
- 7 including:
- 8 (1) any miswriting, misspelling, or grammatical error;
- 9 (2) any misjoinder of parties defendant or offenses charged;
- 10 (3) the presence of any unnecessary repugnant allegation;
- 11 (4) the failure to negate any exception, excuse, or provision
- 12 contained in the statute defining the offense;
- 13 (5) the use of alternative or disjunctive allegations as to the acts,
- 14 means, intents, or results charged;
- 15 (6) any mistake in the name of the court or county in the title of
- 16 the action, or the statutory provision alleged to have been

1 violated;

2 (7) the failure to state the time or place at which the offense was
3 committed where the time or place is not of the essence of the
4 offense;

5 (8) the failure to state an amount of value or price of any matter
6 where that value or price is not of the essence of the offense; or

7 (9) any other defect which does not prejudice the substantial
8 rights of the defendant.

9 (b) The indictment or information may be amended in matters of
10 substance ~~or form~~, and the names of material witnesses may be added,
11 by the prosecuting attorney, upon giving written notice to the
12 defendant, at any time up to:

13 (1) thirty (30) days if the defendant is charged with a felony; or

14 (2) fifteen (15) days if the defendant is charged only with one (1)
15 or more misdemeanors;

16 before the omnibus date **or at any time before the commencement of**
17 **trial when the amendment does not prejudice the substantial rights**
18 **of the defendant.** When the information or indictment is amended, it
19 shall be signed by the prosecuting attorney **or a deputy prosecuting**
20 **attorney.**

21 (c) Upon motion of the prosecuting attorney, the court may, at any
22 time before, during, or after the trial, permit an amendment to the
23 indictment or information in respect to any defect, imperfection, or
24 omission in form which does not prejudice the substantial rights of the
25 defendant.

26 (d) Before amendment of any indictment or information other than
27 amendment as provided in subsection (b) of this section, the court shall
28 give all parties adequate notice of the intended amendment and an
29 opportunity to be heard. Upon permitting such amendment, the court
30 shall, upon motion by the defendant, order any continuance of the
31 proceedings which may be necessary to accord the defendant adequate
32 opportunity to prepare his defense.

33 (e) An amendment of an indictment or information to include a
34 habitual offender charge under IC 35-50-2-8, **IC 35-50-2-8.5, or**
35 **IC 35-50-2-10** must be made not later than ten (10) days after the
36 omnibus date. However, upon a showing of good cause, the court may
37 permit the filing of a habitual offender charge at any time before the
38 commencement of the trial.

SECTION 5. IC 35-38-1-1.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 1.3. After a court has pronounced a sentence for a felony conviction, the court shall issue a statement of the court's reasons for selecting the sentence that it imposes."**

Page 4, line 41, after "Class A" reset in roman "or".

Page 5, line 4, delete "." and insert "; or".

Page 8, between lines 23 and 24, begin a new paragraph and insert:

"SECTION 10. IC 35-50-2-1.3, AS ADDED BY P.L.71-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1.3. (a) For purposes of sections 3 through 7 of this chapter, "advisory sentence" means a guideline sentence that the court may voluntarily consider as the midpoint between the maximum sentence and the minimum sentence.

(b) Except as provided in subsection (c), a court is not required to use an advisory sentence.

(c) In imposing:

(1) consecutive sentences **for felony convictions that are not crimes of violence (as defined in IC 35-50-1-2(a)) arising out of an episode of criminal conduct**, in accordance with IC 35-50-1-2;

(2) an additional fixed term to an habitual offender under section 8 of this chapter; or

(3) an additional fixed term to a repeat sexual offender under section 14 of this chapter;

a court is required to use the appropriate advisory sentence in imposing a consecutive sentence or an additional fixed term. However, the court is not required to use the advisory sentence in imposing the sentence for the underlying offense.

(d) This section does not require a court to use an advisory

1 **sentence in imposing consecutive sentences for felony convictions**
2 **that do not arise out of an episode of criminal conduct."**

3 Renumber all SECTIONS consecutively.
 (Reference is to SB 45 as printed February 9, 2007.)

and when so amended that said bill do pass.

Representative Lawson L